

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

ROGER D. CASTLEBERG, R.PH.,
RESPONDENT.

89 PHM 47

The parties to this action for the purposes of § 227.53, Wis. Stats., are:

Roger D. Castleberg, R.Ph.
N860 190th Street
Maiden Rock, WI 54750

Wisconsin Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Roger D. Castleberg, is and was at all times relevant to the facts set forth herein a Registered Pharmacist licensed in the State of Wisconsin pursuant to license #9519. At all times relevant to the facts set forth herein, respondent was the managing pharmacist of the pharmacy where the activities set forth herein took place, but was not the owner and did not personally profit from the activity described herein.

2. On and between 3/17/82 and 2/18/83 respondent sold 83 bottles of Schedule V codeine-containing substance to Linda B., without a prescription.

3. On and between 7/30-31/82, 8/5-6/82, 8/19-20/82, 10/21-22/82, 10/25-26/82, 11/23-24/82, and 12/16-17/87, respondent sold two 4 ounce bottles of Schedule V codeine-containing substance to the same Linda B., without a prescription and within a 48 hour period.

4. On and between 9/11/84 and 5/27/89, respondent sold 347 bottles of Schedule V codeine-containing substance to the same Linda B., without a prescription.
5. On a date unknown but between 1/4/85 and 1/5/85, respondent sold a bottle of Schedule V substance to the same Linda B., without recording the date of the sale.
6. On and between 4/19/83 and 4/11/89, respondent sold 146 bottles of Schedule V codeine-containing substance to Larry J., without a prescription.
7. On and between 4/22/83 and 5/10/89, respondent sold 198 bottles of Schedule V codeine-containing substance to Lois B., without a prescription.
8. On a date unknown but between 1/4/85 and 1/5/85, respondent sold a bottle of Schedule V substance to the same Lois B., without recording the date of the sale or the name of the product.
9. On and between 9/10/84 and 10/17/86, respondent sold 70 bottles of Schedule V codeine-containing substance to Charlotte L., without a prescription.
10. On and between 9/17/84 and 10/17/86, respondent sold 53 bottles of Schedule V codeine-containing substance to Peter P., without a prescription.
11. On a date unknown but between 3/4/85 and 3/8/85, respondent sold a bottle of Schedule V substance to the same Peter P., without recording the date of the sale or the name of the product.
12. On and between 6/19/85 and 10/27/86, respondent sold 40 bottles of Schedule V codeine-containing substance to Joie D., without a prescription.
13. On a date unknown but between 10/21/86 and 10/25/86, respondent sold a bottle of Schedule V substance to John D., without recording the date of the sale or the name of the product.
14. On each and every occasion of a sale described in this complaint, respondent failed to record the address of the purchaser, and instead permitted the purchaser to record only the name of the post office or municipality of residence.
15. On and between 3/17/82 and 5/27/89, respondent's Schedule V books show approximately 1400 sales of codeine cough syrup without a prescription. Of this number, approximately 937 (67%) were to one of the six persons identified in these findings as having made multiple nonlegitimate purchases. Of the 1400 sales, 430 (over 30%) were to one customer: Linda B.

CONCLUSIONS OF LAW

16. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to § 450.10(1), Wis. Stats.

17. The Board is authorized to enter into the attached Stipulation pursuant to § 227.44(5), Wis. Stats.

18. The conduct described in paragraphs 2-15, above, violated one or more of the following: §§161.23(1) and (5) and 161.38(4), Wis. Stats. and § Phar 10.03(1),(3),(4), and (5), Wis. Adm. Code, and 21 CFR §1306.23(b). Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the license of Roger D. Castelberg, R.Ph., to practice pharmacy is hereby SUSPENDED until respondent takes and passes both the Federal Drug Law Examination and the Wisconsin Pharmacy Jurisprudence Examination. All grades and the examination scores shall be reported directly to the board. The state examination may, at respondent's option, be taken through the PLATO professional development center. Upon proof of passing the course and examinations, respondent's license shall be forthwith reissued and restored by the staff of the department, with no further action by the board. The suspension imposed herein is STAYED until August 1, 1993. If respondent takes and fails the Wisconsin Pharmacy Jurisprudence Examination twice, then he shall not attempt it again until he takes and passes a 3-credit (based on semester hours) course in Pharmacy Law from an accredited school of pharmacy, which course shall be approved by the board,

IT IS FURTHER ORDERED, that respondent's license is LIMITED in the following respect:

Respondent, and any pharmacy for which respondent is the managing pharmacist, shall not dispense any Schedule V controlled substance to any person without a valid prescription from an authorized prescriber.

IT IS FURTHER ORDERED, that respondent shall forfeit \$4,000, to be paid within 60 days of this order

IT IS FURTHER ORDERED, that respondent shall pay the costs of the investigation and prosecution of this matter in the amount of \$1,000, to be paid within 30 days of this order.

Dated this 9 day of February, 1993.

WISCONSIN PHARMACY EXAMINING BOARD

by: Charles H. Dunkel, R.Ph.
a member of the Board

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
 :
ROGER D. CASTLEBERG, R.PH., :
RESPONDENT. :

STIPULATION

89 PHM 47

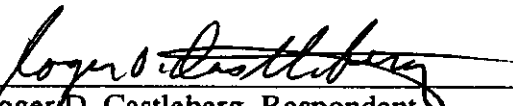
It is hereby stipulated between the above Respondent, personally on his own behalf, and the Department of Regulation and Licensing, Division of Enforcement by its undersigned attorney as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by Stipulation and without a hearing on the formal complaint which has been issued in this matter.
2. Respondent is aware and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel attendance of witnesses by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. By entering to this Stipulation, Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.
4. Respondent is aware of his right to seek legal representation and has obtained legal advice prior to execution of this Stipulation.
5. With respect to the attached Final Decision and Order, Respondent admits the facts set forth in the Findings of Fact, and further agrees that the Board may reach the conclusions set forth in the Conclusions of Law, and may enter the Order.
6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that either the Board or the Respondent has been prejudiced or biased in any manner by the consideration of this attempted resolution.
7. If the Board accepts the terms of this Stipulation, the parties to this Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondent agrees that an attorney for the Division of Enforcement may appear at any deliberative meeting of the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, with respect to this Stipulation but that appearance is limited to statements solely in support of this Stipulation, and to answering questions asked by the Board and its staff, and for no other purpose.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

10. Respondent is informed that should the board adopt this stipulation, the board's final decision and order adopting the terms of the stipulation will be published in the Monthly Disciplinary Report issued by the department, and a summary of the order adopting the terms of the stipulation shall be published in the Wisconsin Regulatory Digest issued semiannually by the department, all of which is standard Department policy and in no way specially directed at Respondent.



Roger D. Castleberg, Respondent

1-22-93

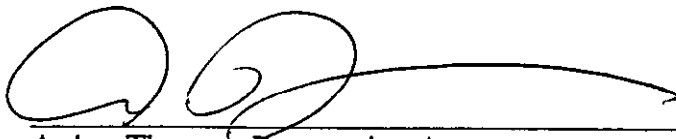
Date



Eric J. Wahl, Attorney for Respondent

1-26-93

Date



Arthur Thexton, Prosecuting Attorney
Division of Enforcement

1/28/93

Date

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Pharmacy Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Pharmacy Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Pharmacy Examining Board.

The date of mailing of this decision is February 11, 1993.